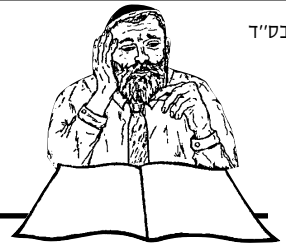


THE DAF HAKASHRUS



A MONTHLY NEWSLETTER FOR THE  RABBINIC FIELD REPRESENTATIVE

FOOD INGREDIENTS LABELS: A PRIMER ON REGULATIONS (PART I)

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Ingredients Approval Registry

Should salmon raised on feed that artificially keeps its flesh pink be labeled as containing "color additives"? That question is the subject of a class action lawsuit in Seattle against major supermarkets there. It is one of a number of lawsuits brewing across the country that center on food labeling, and it brings into focus a question that kosher consumers, and kashrus professionals in particular, often ask: Can I be reasonably sure that what's not on the label is not in the food?

The first part of this article will try to answer that question from the point of view of the regulations governing food labels. But a review of the regulations is not adequate to answer a kashrus consumer's questions; it is also necessary to evaluate the extent to which companies adhere to the regulations. The first part of this article will provide some background about regulations and the second part is a brief discussion about compliance.

I. REGULATIONS

The Food and Drug Administration (FDA), as it responds to Congress and writes regulations for food labels, has to balance two separate interests: One is to inform consumers. The more inclusive a label, the better position a consumer is in to make choices. But the FDA also recognizes that it should not force food manufacturers to sacrifice their trade secrets – which often center upon what ingredients are put into foods, and at what proportions. The regulations represent a middle ground, a balance between these two interests. The philosophy behind food labeling-laws, as the FDA's literature itself states, is to regulate without over-regulating.

The FDA balances these interests by requiring that all ingredients be declared while granting a few narrow, but significant, exemptions. For example, absent on ingredients labels is the proportion, or percentage, of each ingredient. The regulations require only that food labels list the ingredients in descending order of predominance according to weight. That means that the heaviest is first, the lightest is last, and so on.¹ (Medicine ingredients labels, it should be noted, are not beholden to this rule. Medicine labels list ingredients in alphabetical order only.)

A second exemption permits collective language for flavors and spices.² A simple declaration of "natural flavors" is allowed to cover a host of ingredients used in a product. Collective language is a critical exemption for manufacturers that use proprietary ingredients that can be considered "flavors" or "spices". As a case in point, a chametz ingredient could be hidden behind the pillar of "natural flavors". If a person wants to know whether a product is subject to *chametz sh'ovar aloy HaPesach*, it would be prudent not to disregard a "natural flavors" declaration.

Any other ingredient has to be specifically identified. But that statement is meaningful only insofar as we know what an "ingredient" is. Although the regulations do not explicitly define "ingredient", they do discuss a class of "incidental additives" that are not considered ingredients and yet can be present in a food. An "incidental additive" is exempt if, according to the regulations, it is present at "insignificant levels" and has no "technical or functional effect" in a food. "Incidental additives" are discussed in a section called "exemptions" and are some of the more open-ended of the regulations. As a result, they permit a broad range of interpretation.

According to the FDA website, the most common way in which an "incidental additive" would be found in foods is as a sub-ingredient. The regulations exempt "substances that have no technical or functional effect but are present in a food by reason of having been incorporated into the food as an ingredient of another food, in which the substance did have a functional or technical effect".⁴

An example of a sub-ingredient that would be exempt from labeling is beta-carotene, a yellow/orange coloring agent that is used in margarine. If margarine that contains beta-carotene were used as an ingredient in a strawberry colored cookie, the beta-carotene, a kosher sensitive substance, would not have to be listed as an ingredient. On the other hand, the oil in the margarine, although only a sub-ingredient, does have a technical or functional effect in a cookie. Therefore, it stands to reason, the oil in the margarine would be required to be on an ingredients label.⁵

Some other examples of incidental additives are the following: A release agent, which helps food separate from equipment that it might otherwise stick to, would probably be exempt from an ingredients label because it does not play any specific role in the food (although from a kashrus perspective its presence may be relevant). Residual product from a previous run is occasionally mixed into a different product in a new run. Such residual product would qualify as "a substance that has no technical or functional effect"

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French DRESSING

INGREDIENTS: VEGETABLE OIL (SOYBEAN, CANOLA), DISTILLED VINEGAR, WATER, SUGAR, SALT, CONTAINS LESS THAN 2% OF: TOMATO PASTE, NONFAT DRY MILK, PAPRIKA, NATURAL FLAVOR, GARLIC, SPICE, XANTHAN GUM, POLYSORBATE 60, PROPYLENE GLYCOL ALGINATE, ANNATTO, SORBIC ACID AND CALCIUM DISODIUM EDTA TO PROTECT QUALITY. DRIED

Nutrition Facts	Amount/serving %DV*		Amount/serving %DV*	
	Total Fat	14g 21%	Total Carb.	5g 2%
Serv. Size 2 Tbsp. (30g)	Sat. Fat	2g 10%	Dietary Fiber	0g 0%
Servings 16	Cholest.	0mg 0%	Sugars	5g
Calories 150	Sodium	260mg 11%	Protein	0g
* Fat Cal. 120	Percent Daily Values (DV) are based on a 2,000 calorie diet. Vitamin A 4% • Vitamin C 0% • Calcium 0% • Iron 0%			

INGREDIENTS

continued from previous page

in a food. Airborne particles of whey powder, although in parts per million, can nevertheless be present in a food. Manufacturers of chocolate, for example, have voluntarily made dairy declarations on non-dairy chocolate because of concerns for allergen reactions. Labeling laws do not require such declaration because the whey powder is present at “insignificant levels” and has no “technical or functional effect” in the food. Exemptions for trace additives such as these are likely driven more by practical considerations than out of a desire to protect food manufacturers’ trade secrets. It is unrealistic to require food manufacturers to include all of these possibilities on a label.

The dairy or non-kosher status of equipment, important in an evaluation of the kosher or pareve status of a food, is totally outside the FDA’s universe of concern. As significant as “*Bliyos*” are to Kashruth concerns, they are not even considered “incidental additives” by the FDA.

It is difficult to identify other examples of “incidental” additives. Strictly speaking, almost everything added to a food has some “technical or functional effect” in the food. Indeed, food labeling specialists at the FDA were hard-pressed to list more than one or two items – sulfites at less than 10 parts per million, for example – that are deliberately added to a food, and are not sub-ingredients of other ingredients, that would be excluded. Even an enzyme added to a food and later removed, the FDA specialists asserted, should be declared, as long as the enzyme plays a technical or functional role in a food – which they invariably do.

The limited number of additives that would qualify as “incidental” underscores how comprehensive and pervasive the regulations are. In fact, besides selected use of collective language for flavors and spices, and the exemption for incidental additives, nearly everything else must be declared.

An illustration of how exacting the regulations can be is the case of the farmed salmon and the Seattle lawsuit. Farmed salmon are fed astaxanthin, an anti-oxidant that has the effect of making their flesh pink (more on the kashrus ramifications of that subject can be found in an excellent article by Rabbi Chaim Goldberg in the previous issue of *Daf Hakashrus*). Astaxanthin is part of the feed given to farmed salmon, and it is a vitamin that wild salmon would anyway absorb as part of their natural diet. Nevertheless the regulations consider astaxanthin to be a “color additive”. A color additive, the regulations state, “includes an ingredient of an animal feed whose intended function is to impart, through biological processes of the animal, a color to the meat, milk, or eggs of the animal.”⁶

Finally, the reader will note that no mention has been made of an exemption of an ingredient that is less than two per cent of the food. Entrenched, somehow, in the public mind is a notion that anything less than two per cent need not be labeled. That idea is at loggerheads with the regulations. So where did the idea come from? Actually, there is a source for a two per cent rule in the regulations. But it’s very different from what people think it is.

The 2% rule plays a role in the following: all ingredients must be labeled in order of predominance, by weight. The heaviest is first, and so on. All ingredients that are less than 2% of the weight of the product are freed from being placed in a specific order – that is, order of predominance by weight. As long as the ingredients label states: “the following ingredients are present at less than 2%” or “1.5%” or so on, the ingredients can be in any order that the manufacturer chooses.⁷ (Please refer to the ingredient statement on the “French Dressing” label on the previous page).

¹ See Code of Federal Regulations 101.4(a)1. The Code of Federal Regulations (CFR) is a public government document and can be found, among other places, on the Internet. Go to www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/cfrsearch.cfm. Section 21 of the CFR is the section that governs the food industry, and several articles within that section relate to the issue of food labeling. In general, 21 CFR is a helpful document for mashgichim to be familiar with because it provides details for the ingredients and processes pertinent to the types of manufacture that mashgichim see every day.

² CFR 101.4b(1) ³ CFR 101.100 ⁴ CFR 101.100(3) i ⁵ CFR 101.4b(2)

⁶ CFR 21.70(3) ⁷ CFR 101.4a(2)

Important Notification Re Defective Blue Hashgocho Seals

Please be advised that some blue seals with the numbers 20001-30000 may be defective and can be opened and closed without any visible signs of tampering. If you have any such seals, please inspect them to determine if they can be reopened. If you find any seals defective, please contact Rabbi Howard Katzenstein at (212) 613-8169; fax (212) 613-0679; email howardk@ou.org.

KASHRUTH alert!

GREAT VALUE BUTTER FLAVORED PANCAKE & WAFFLE SYRUP as well as **GREAT VALUE PANCAKE & WAFFLE SYRUP** produced by Wal-Mart Stores Inc., Bentonville, AR bear the © symbol, but lack the necessary “D” designation. Corrective action is being taken.

GIANT EAGLE SALT AND PEPPER POTATO CHIPS produced by Giant Eagle, Inc., Pittsburgh, PA is certified as Dairy, but the “D” was inadvertently omitted. Corrective action is being taken.

KASHRUTH advisory

It has come to the attention of the OU that some insect infestation was found in cans of **QUARTERED ARTICHOKE IN BRINE**. The infestation was not significant enough to prohibit one from buying this product, however, it is recommended that one check the artichokes in brine to make sure there is no infestation. Whole Artichoke Hearts in Brine and Artichoke Salad with whole Artichoke Hearts continue NOT to be certified by the OU since infestation cannot be controlled. Marinated Artichokes do not need to be checked and are certified by the OU.

WISHBONE ITALIAN DRESSING & WISHBONE ROBUSTO ITALIAN SALAD DRESSING produced by Unilever Bestfoods, Englewood, NJ has the © symbol mistakenly omitted from the 8 oz., 16 oz., 24 oz., & 32 oz. bottles with a “better when purchased by ____ 2004” code. The © will reappear in the near future on these salad dressings. In the duration, these products are under © certification even without an © on the label. This certification applies only to the Wishbone Italian Dressing and the Wishbone Robusto Italian Dressing varieties and to no other Wishbone Salad Dressing.

MAZAL TOV TO ...

our devoted secretary **CHANIE BARBANEL** on her engagement to Adi Cohen from Queens, NY.